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The Copenhagen Document: Interventionin Support of Democracy

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I. THE COPENHAGEN DOCUMENT

The Copenhagen Document,[1] one of a series of instruments adopted by the Conference on Security and Cooperation in Europe (CSCE), is clearly one of the great documents in the history and development of human rights and international law.[2] Both its breadth and detail are extraordinary: its provisions on human rights;[3] on minority rights;[4] its condemnation of anti-Semitism;[5] its condemnation of torture.[6] The progress that has been made in the international protection of human rights, at least at the theoretical level, is particulary impressive when one considers that for centuries the accepted doctrine was that only states—not individuals—are subjects of international law. Indeed, for years after the U.N. Charter was adopted some members of the United Nations argued that even discussion of a state's human rights violations was prohibited by article 2(7) of the U.N. Charter.[7] In the United States, the American Bar Association not so long ago took the position

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1. Document of the Copenhagen Meeting of the Conference on the Human Dimension of the Conference on Security and Cooperation in Europe (CSCE), June 29, 1990, *reprinted in* 29 I.L.M. 1305 (1990) [hereinafter Copenhagen Document]. The Conference on the Human Dimension of the CSCE was an outgrowth of the Helsinki Final Act (HFA). For an excellent review of the several meetings of the Conference on the Human Dimension of the CSCE and the documents adopted, see Thomas Buergenthal, *The CSCE Rights System*, 25 GEO. WASH. J. INT'L L. & ECON. 333 (1991).

2. The Chairman of the U.S. Commission on Security and Cooperation in Europe, the Honorable Steny H. Hoyer, characterized the Copenhagen Document as the Magna Carta of the law of engagement. *Conference Stresses "Rule of Engagement" in United States Foreign Policy*, 13 NAT'L SECURITY L. REP., Oct. 1991, at 1.

3. Copenhagen Document, *supra* note 1, paras. 5.7, 10–11.3.

4. *Id.* paras. 30–39.

5. *Id.* para. 40.

6. *Id.* paras. 16–16.7.

7. U.N. CHARTER art. 2, para. 7 states: "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state . . . ."

that the United States could not ratify the Genocide Convention[8] because it dealt with matters within the domestic jurisdiction of the United States.[9] No one today would suggest that the subjects dealt with by the Copenhagen Document are not proper subjects of international law.[10]

Many of the rights referred to in the Copenhagen Document are also found in earlier instruments such as the Universal Declaration of Human Rights,[11] the International Covenant on Civil and Political Rights,[12] the International Convention on the Elimination of All Forms of Racial Discrimination,[13] and the Convention Against Torture.[14] What is unique in the Copenhagen Document is that it asserts (1) that the protection of human rights is one of the basic purposes of government, (2) that a freely elected representative government is *essential* for the protection of human rights and (3) that states have a responsibility to protect democratically elected governments—their own and other states'—if they are threatened by acts of violence or terrorism. Thus, the Copenhagen Document provides:

> (1) The participating States express their conviction that the protection and promotion of human rights and fundamental freedoms is one of the basic purposes of government, and reaffirm that the recognition of these rights and freedoms constitutes the foundation of freedom, justice and peace.
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> (2) . . . They consider that the rule of law does not mean merely a formal legality... but justice based on the recognition and full acceptance of the supreme value of the human personality and

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8. Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 78 U.N.T.S. 277 (entered into force Jan. 12, 1951).

9. *See* MALVINA HALBERSTAM & ELIZABETH F. DEFEIS, WOMEN'S LEGAL RIGHTS: INTERNATIONAL COVENANTS, AN ALTERNATIVE TO ERA? 50–52 (1987).

10. For example, the Moscow Document, adopted October 3, 1991, specifically provides:

> The participating States emphasize that issues relating to human rights, fundamental freedoms, democracy and the rule of law are of international concern, as respect for these rights and freedoms constitutes one of the foundations of the international order. They categorically and irrevocably declare that the commitments undertaken in the field of the human dimension of the CSCE are matters of direct and legitimate concern to all participating States and do not belong exclusively to the internal affairs of the State concerned.

Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, pmbl., para. 9, *reprinted in*, 30 I.L.M. 1670 (1991) [hereinafter Moscow Document]. *See also* statement quoted *infra* note 49.

11. G.A. Res. 217A (III), U.N. GAOR, 3d Sess., U.N. Doc. A/810 (1948).

12. 999 U.N.T.S. 171, 6 I.L.M. 368 (1967), G.A. Res. 2200 (XXI), U.N. GAOR, 21st. Sess., Supp. No. 16, at 52, U.N. Doc. A/6316 (1966).

13. 660 U.N.T.S. 195, 5 I.L.M. 352 (1966), G.A. Res. 2106, U.N. GAOR, 21st. Sess., Supp. No. 14, at 47, U.N. Doc. A/6014 (1965).

14. Annex G.A. Res. 46, U.N. GAOR, 39th Sess., Supp. No. 51, at 197, U.N. Doc. A/39151 (1984), *as modified*, 24 I.L.M. 535 (1985).

guaranteed by institutions providing a framework for its fullest expression.

. . . .

(5) . . . Among those elements of justice which are essential to the full expression of the inherent dignity and of the equal and inalienable rights of all human beings are . . . :

(5.1) Free elections . . . held at reasonable intervals by secret ballot . . . ;

(5.2) A form of government that is representative in character, in which the executive is accountable to the elected legislature or the electorate;

. . . .

(6) The participating states declare that the will of the people, freely and fairly expressed through periodic and genuine elections, is the basis of the authority and legitimacy of all government . . . They recognize their responsibility to defend and protect . . . the democratic order freely established through the will of the people against the activities of persons, groups or organizations that engage in or refuse to renounce terrorism or violence aimed at the overthrow of that order *or of that of another participating state.*[15]

Paragraph 7 spells out in considerable detail what steps states must take "to ensure that the will of the people serves as the basis of the authority of government." These include free elections at reasonable intervals; at least one chamber elected by popular vote; universal suffrage; secret ballot; the right to form political parties; the right to campaign; access to the media; and the obligation to "ensure that candidates who obtain the necessary number of votes required by law are duly installed in office and are permitted to remain in office until their term expires."[16]

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15. Copenhagen Document, *supra* note 1 (emphasis added).
16. Paragraph 7 provides:

[T]o ensure that the will of the people serves as the basis of the authority of government, the participating States will

(7.1) —hold free elections at reasonable intervals, as established by law;

(7.2) —permit all seats in at least one chamber of the national legislature to be freely contested in a popular vote;

While not a treaty, the Copenhagen Document, adopted by thirty-five countries, represents the views of most of the major powers of the free world and of what used to be the communist world.[17] These states affirmed, in the clearest terms possible, that the promotion of human rights and fundamental freedoms is one of the basic purposes of government, that freely elected governments are essential for the protection of those rights, and that the participating states have a responsibility to defend such governments against violence and terrorism.

II. THE OBLIGATION TO PROTECT FREELY ELECTED GOVERNMENTS AGAINST OVERTHROW

As noted, paragraph 6 provides that the participating states "recognize their responsibility to defend and protect . . . the democratic order freely established through the will of the people" against "terrorism or violence aimed at the overthrow of that order or of that of another participating state." The question arises whether this provision of the Copenhagen Document authorizes one state to intervene and if

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(7.3) —guarantee universal and equal suffrage to adult citizens;

(7.4) —ensure that votes are cast by secret ballot or by equivalent free voting procedure, and that they are counted and reported honestly with the official results made public;

(7.5) —respect the right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination;

(7.6) —respect the right of individuals and groups to establish, in full freedom, their own political parties or other political organizations and provide such political parties and organizations with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and by the authorities;

(7.7) —ensure that law and public policy work to permit political campaigning to be conducted in a fair and free atmosphere in which neither administrative action, violence nor intimidation bars the parties and the candidates from freely presenting their views and qualifications, or prevents the voters from learning and discussing them or from casting their vote free of fear of retribution;

(7.8) —provide that no legal or administrative obstacle stands in the way of unimpeded access to the media on a non-discriminatory basis for all political groupings and individuals wishing to participate in the electoral process;

(7.9) —ensure that candidates who obtain the necessary number of votes required by law are duly installed in office and are permitted to remain in office until their term expires or is otherwise brought to an end in a manner that is regulated by law in conformity with democratic parliamentary and constitutional procedures.

Copenhagen Document, *supra* note 1.

17. The "participating states" in the Copenhagen Conference included the countries of Western Europe, the United States, Canada, the Soviet Union, Bulgaria, Hungary, and Romania.

necessary to use force to protect a freely elected government in another state. A strong argument can be made that the Copenhagen Document does provide such authorization—that if (1) there is a freely elected government, and (2) it is either barred from taking office or deposed by violent means, other states have not only a right but a responsibility to restore it to power and, if necessary, to use force to that end. The language of paragraph 6 suggests that states are authorized to take whatever steps are necessary to "defend and protect" the democratic order of participating states. While paragraph 6 does not specifically authorize the use of force, neither does it prohibit the use of force. The participating states must have been aware that force may be necessary to "defend and protect . . . against the activities of persons, groups or organizations that engage in . . . terrorism or violence."

Is such use of force consistent with the prohibition contained in article 2(4) of the U.N. Charter? That article prohibits "the threat or use of force *against the territorial integrity or political independence* of any state, or in any manner inconsistent with the purposes of the United Nations."[18] Clearly, intervention at the request of a freely elected government in danger of being overthrown would not constitute a violation of article 2(4). However, even if the freely elected government does not request assistance—for example, it may not be able to communicate with foreign governments or it may fear that such a request would endanger the lives of the elected officials or of others[19]—a strong argument can be made that forcible intervention would not violate the U.N. Charter. If elections are held, the legally elected government is deposed by violence (internal or external), and a second state intervenes, removes those who deposed the legally elected government, restores *that* government and withdraws, leaving the legitimate government in charge, the second state has not acted against but in support of the "territorial integrity" and "political independence" of a state.[20] Nor is action restoring the freely elected government "otherwise inconsistent with the purposes of the United Nations." Restoration of the freely elected government furthers one of the fundamental purposes of the Charter, the promotion of human rights, and is a vindication of one of the principles affirmed in the Charter, self-determination, as originally defined by Woodrow Wil-

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18. U.N. CHARTER art. 2, para. 4 (emphasis added).

19. *See, e.g.*, Abraham D. Sofaer, *The Legality of United States Action in Panama*, 29 COLUM. J. TRANSNAT'L L. 281, 290 (1991) (noting that if the United States had obtained the Panamanian president's approval prior to entering Panama, the president himself might have been subjected to severe political and physical risks).

20. *Cf.* Anthony D'Amato, *The Invasion of Panama Was a Lawful Response to Tyranny*, 84 AM. J. INT'L L. 516, 520 (1990).

son—"governments derive all their just powers from the consent of the governed."[21]

Some publicists have taken the position that any use of force by one state in the territory of another violates article 2(4) of the Charter. Professor Henkin, for example, has argued that "the Charter . . . prohibits the use of armed force by one state on the territory of another . . . for any purpose, in any circumstances."[22] One of his arguments in support of an absolute prohibition on the use of force is that "[w]ar inflict[s] the greatest injustice, the most serious violation of human rights . . . ."[23] This argument is open to challenge on two grounds. An empirical study shows that the most serious violation of human rights, the denial of life itself, is inflicted to a far greater extent by totalitarian governments than by war. Professor Rummel found that "while about 37,000,000 people have been killed in battle in *all* foreign and domestic wars in our century, government democide (genocide and mass murder) have killed over 148,074,000 . . . and over 85 percent of these were killed by totalitarian governments."[24] Secondly, even if the proposition that war inflicts the most serious violation of human rights were empirically correct, historians generally agree that democratic states are less likely to be involved in war than totalitarian states. In fact, in the last 150 years no liberal democracies have fought against each other.[25] Thus, even if one accepts the position that every intrusion into the territory of another state is technically a violation of that state's territorial sovereignty, one may reasonably take the position that such a temporary violation of the state's territorial sovereignty is justified by its purpose: the restoration of the democratically elected government.

Furthermore, the position that the prohibition on the use of force is content neutral,[26] that the U.N. Charter condemns equally the use of force in support of the most despotic dictator and the use of force

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21. Woodrow Wilson, Address to the Senate (Jan. 22, 1917), *in* 40 THE PAPERS OF WOODROW WILSON 533, 537 (Arthur S. Link ed., 1982).

22. Louis Henkin, *Use of Force: Law and U.S. Policy*, *in* RIGHT V. MIGHT: INTERNATIONAL LAW AND THE USE OF FORCE 37, 39–40 (Council on Foreign Relations ed., 1989).

23. *Id.* at 39. Professor Henkin makes the historical observation that

> [t]he Charter reflected universal agreement that the status quo prevailing at the end of World War II was not to be changed by force. Even justified grievances and a sincere concern for "national security" or other "vital interests" would not warrant any nation's initiating war. Peace was the paramount value. . . . War was inherently unjust.

Id. at 38–39.

24. R.J. Rummel, The Rule of Law: Towards Eliminating War and Democide 4 (unpublished paper on file with the American Bar Association Committee on Law and National Security).

25. *See* Franck, *infra* note 32; Rummel, *supra* note 24.

26. *See* Henkin, *supra* note 22, at 62–63 ("[w]ith respect to the use of force, the Charter is neutral between democracy and totalitarianism"). *See also* Oscar Schachter, *In Defense of International Rules on the Use of Force*, 53 U. CHI. L. REV. 113, 138 (1986).

in support of a freely elected government[27]—or those seeking to establish a freely elected government—has never been fully accepted. Proponents of the Reagan Doctrine, for example, have argued that it is legitimate for the United States to give

> support—including military support—for insurgencies under certain circumstances: where there are indigenous opponents to a government that is maintained by force, rather than popular consent; where such a government depends on arms supplied by the Soviet Union, the Soviet bloc, or other foreign sources; and where the people are denied a choice regarding their affiliations and future.[28]

Professor Reisman argues that,

> [t]here is neither need nor justification for treating in a mechanically equal fashion Tanzania's intervention in Uganda to overthrow Amin's despotism, on the one hand, and Soviet intervention in Hungary in 1956 or Czechoslovakia in 1966 to overthrow popular governments and to impose an undesired regime on a coerced population, on the other.
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> . . . .
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> . . . The critical question in a decentralized system is not whether coercion has been applied, but whether it has been applied in support of or against community order and basic policies, and whether it was applied in ways whose net consequences include increased congruence with community goals and minimum order.
>
> Interpretation of a constitutive instrument requires principles and procedures that achieve, in ways appropriate to the context and consistent with the need for community order, the fundamental policies of the instrument as a whole. In the construction of Article 2(4), attention must always be given to the spirit of the Charter and not simply to the letter of a particular provision.[29]

The Copenhagen Document does not go as far as the Reagan Doctrine, nor as far as Professor Reisman. It does not contemplate the use

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27. Henkin states:

> International law provides no more basis for permitting the export of democracy by force than for permitting the export of socialism by force. As a matter of law, one cannot justify the U.S. action in Grenada or support for the Contras and condemn the Soviet Union's role in Czechoslovakia.

Henkin, *supra* note 22, at 56.

28. Jeane J. Kirkpatrick & Allan Gerson, *The Reagan Doctrine, Human Rights and International Law*, *in* RIGHT V. MIGHT, *supra* note 22, at 20.

29. W. Michael Reisman, *Coercion and Self-Determination: Construing Charter Article 2(4)*, 78 AM. J. INT'L L. 642, 644–45 (1984).

of force to topple a repressive regime, but applies only when a government has already been freely elected and is either barred from taking office or deposed by the use of force. Paragraph 6 speaks of the responsibility to "defend and protect" the democratic order against those who would "overthrow" it.[30] Thus, it is only after the people of a state have decided that they want a freely elected government, and have implemented that decision by holding elections, that other states have the right, or in the words of the Copenhagen Document the "responsibility," to protect it.

This more limited approach avoids what Professor Schachter presents as a "fundamental reason" for his opposition to Reisman's position, namely,

> that it is incompatible with the concept of a pluralist society of independent states to allow states to attack each other in order to impose a particular form of government. It is no answer to this to maintain that force should be allowed only to bring about a goal, such as self-determination, which all states profess to accept.

According to Schachter, such a position ignores

> the realities of a world deeply divided about the meaning of democracy and self-determination. Powerful states would be given a virtually unlimited right to overthrow governments alleged to be unresponsive to the "true" will of the people. One side's favored test of self-rule would not be acceptable to the other side.[31]

Where, however, the state has already held elections and the elected government is prevented from taking office or deposed by threat or violence, the form of government is not being imposed on the state; the state itself has already chosen its form of government. Nor would states be given an "unlimited right to overthrow governments" under this approach; and there would be no need to choose between tests of self rule since, by hypothesis, the state has already made the choice.

In his seminal article *The Emerging Right to Democratic Governance*,[32] Professor Thomas Franck argues for a customary international law right to a democratically elected government. He traces the development of the right in various legal instruments and suggests that "the refusal to permit demonstrably free elections" is increasingly becoming

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30. The Moscow Document similarly refers to the "overthrow or attempted overthrow of a legitimately elected government." Moscow Document, *supra* note 10, para. 17.2.

31. Schachter, *supra* note 26, at 144.

32. Thomas Franck, *The Emerging Right to Democratic Governance*, 86 AM. J. INT'L L. 46 (1992).

recognized as a breach of international law.[33] Franck would, however, permit "enforcement measures such as sanction, blockade, or military intervention in limited circumstances," only if authorized by the U.N. Security Council.[34]

The rule proposed here, based on the Copenhagen Document, is both narrower and broader than the position advocated by Franck's article. It is narrower in that it authorizes intervention in support of democracy only where a state has already opted for a freely elected government and the government so elected was either prevented from taking office or deposed by the use of force. Franck, on the other hand, considers enforcement measures permissible whenever a state refuses "to permit demonstrably free elections or to implement their results."[35] It should be noted that although the rule proposed is narrower than Franck's, it is by no means insignificant. According to Franck "there are more than 110 governments . . . legally committed to permitting open, multiparty, secret-ballot elections with a universal franchise."[36] As recent events in Panama and Haiti demonstrate, these commitments are often ignored. In Panama, the democratically elected government was prevented from taking office;[37] in Haiti, the elected President was deposed by force.[38] Thus, the rule proposed would hardly lack for application.

The rule proposed is broader than Franck's in that it does not limit enforcement to measures authorized by the U.N. Security Council. Franck's opposition to unilateral intervention and insistence on U.N. action is based more on political considerations—the need to allay the fears of small states of abuse by powerful states—than on provisions in the instruments he cites in support of a right to democratic governance.[39] Franck writes:

> That a new rule might authorize actions to enforce democracy still conjures up . . . chilling images to weaker states, which see

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33. *Id.* at 85. Franck states: "It is no longer arguable that the United Nations cannot exert pressure against governments that oppress their own peoples by egregious racism, denials of self-determination and suppression of freedom of expression. That litany is being augmented by new sins: refusals to permit demonstrably free elections or to implement their results." *Id.*

34. *Id.*

35. *Id.*

36. *Id.* at 47.

37. *Panama Election Voided Amid Charges of Government Fraud, Foreign Intervention; U.S. Beefs Up Military Presence*, Facts on File World News Digest, at 329, A1, May 12, 1989, *available in* LEXIS, Nexis Library, Facts File; *Panama: Mood Tense But Calm as Panamanians Await Election Results*, Inter Press Service, May 8, 1989, *available in* LEXIS, Nexis Library, Inpress File.

38. *Leftist Priest Wins Presidency*, Facts on File World News Digest, at 954, A3, Dec. 21, 1990, *available in* LEXIS, Nexis Library, Facts File.

39. Franck, *supra* note 32, at 85.

> themselves as potential objects of enforcement of dubious democratic norms under circumstances of doubtful probity.[40]

That fear, he believes, would deter states from agreeing to international monitoring of their elections, which he considers essential. He states:

> The coherence of the democratic entitlement ultimately will depend on whether most states, most of the time, freely agree to be monitored: whether, in short, the process is perceived as legitimate. To achieve this normative coherence, monitoring will have to be uncoupled, in the clearest fashion, from a long history of unilateral enforcement of a tainted, colonialist "civilizing" mission. If the duty to be monitored is to develop as customary law, it must be reconciled in the minds of governments with their residual sovereignty. This requires that all states unambiguously renounce the use of unilateral, or even regional, *military* force to compel compliance with the democratic entitlement in the absence of prior Security Council authorization under chapter VII of the Charter;
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> . . . .
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> . . . To obtain the general consent necessary to render the denial of democracy a cognizable violation of an international community standard, it must be understood that whatever countermeasures are taken must first be authorized collectively by the appropriate U.N. institutions. Collective action—so the tremulous must understand and the powerful aver—is not a substitute for, but the opposite of, unilateral enforcement.[41]

However, as noted earlier, Franck himself acknowledges that over a hundred states have already opted for freely elected governments[42] and a number have requested international monitoring of their elections.[43] Yet, "all states" have not "unambiguously renounce[d] the use of unilateral or even regional military force to compel compliance," as Franck urges. Thus, his concern that fear of unilateral intervention would cause states to refrain from opting for democratically elected governments seems unfounded. Insofar as monitoring of elections is concerned, states that wish to invite an international group to monitor their elections but fear that a concomitant of such monitoring will be unwanted enforcement by powerful states can declare that they want no action taken without U.N. authorization. Absent such a declaration, the test of lawfulness of the action taken should depend not on

40. *Id.* at 84.
41. *Id.* at 84–85 (emphasis in original).
42. *See supra* text at note 36.
43. Franck, *supra* note 32, at 74–75.

whether it is authorized by the United Nations, but on whether it was intended to and did reinstate a freely elected government that was either prevented from taking power or overthrown by terrorism or violence.

While permitting unilateral enforcement poses certain risks of abuse, limiting enforcement measures to those taken under U.N. auspices poses another risk—that no action will be taken at all. This risk was demonstrated by the U.N. response to the Idi Amin regime in Uganda. In spite of the horrors being perpetrated in that country, the United Nations failed to act, and ultimately it was the unilateral use of force by Tanzania, without U.N. authorization, that resulted in Amin's ouster. Significantly, after Amin was deposed, Uganda's new President complained not of Tanzania's unilateral action, but of the United Nations's failure to act.[44] It is by no means clear that unilateral use of force is the greater risk, nor is it clear that unilateral intervention in Uganda, Grenada, or Panama resulted in a greater denial of human rights or caused greater unhappiness among the peoples of these countries than did the failure to intervene in Biafra, Czechoslovakia, or Hungary. Probably, the opposite is true. Whatever abuses resulted from intervention by democracies would pale by comparison to the horrors perpetrated by totalitarian regimes that were permitted to continue in the name of non-intervention.

It may be that with the dissolution of the Soviet Union, the United Nations will no longer be hampered by the veto power and will take an active role to protect the democratic order. But that is by no means certain. The situation in Russia, successor to the Soviet Union on the Security Council, is still unstable, and, of course, China also has the veto power. Significantly, the Copenhagen Document, which puts such great emphasis on freely elected governments, makes no reference to U.N. action. Rather, it speaks of the responsibility of the "participating states" to "defend and protect" the democratic order against those who would overthrow it by terrorism or violence. In the Paris Charter, adopted shortly after the Copenhagen Document, the participating states agreed to "*support each other* with the aim of making democratic gains irreversible," again without making reference to the United Nations.[45] Moreover, Franck would permit the use of sanctions, including force if necessary, not only to protect and defend a freely elected government against overthrow, but to establish democratic governments. When there is no freely elected government to instate

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44. U.N. GAOR, 34th Sess., at 269–71, UN Doc. A/34/Pv. 14, at 4–6 (1979) (Mr. Godfrey Lukongwa Binaisa, President of the Republic of Uganda).

45. Conference on Security and Co-operation in Europe, Charter of Paris for a New Europe, Nov. 21, 1990, *reprinted in* 30 I.L.M. 193, 195 (1991) (emphasis added).

or reinstate, the potential for abuse is, of course, much greater. According to the rule postulated above, permissible intervention is specifically limited to situations in which a state has opted for a freely elected government, a government has been elected, and the government so elected has been barred from taking office or deposed by use of force.

III. CONCLUSION

In the *Nicaragua* case, the International Court of Justice stated:

> The Court cannot contemplate the creation of a new rule opening up a right of intervention by one state against another on the ground that the latter has opted for some particular ideology or political system.[46]

The states that adopted the Copenhagen Document apparently disagree. The Copenhagen Document is also a repudiation of the position urged by Henkin that whether force is used in support of democracy or of a dictatorship is irrelevant to its legality. The difference, as set forth in the Copenhagen Document, is that democracy—a freely elected government—is essential for the protection of human rights,[47] and "the protection and promotion of human rights and fundamental freedoms is one of the basic purposes of government."[48] The instruments adopted by the Conference on the Human Dimension of the CSCE reject the position that there are no "universally recognized values higher than peace and the autonomy of states."[49] They affirm unequivocally that the protection of human rights and of democratically elected governments are higher values. While not treaties, these documents, adopted by the Conference on the Human Dimension of the CSCE, represent the views of most of the major world powers, the views of the free world and of what used to be the communist world.

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46. Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), 1986 I.C.J. 4, 131, para. 257. The Court added, however, that "respondent had not advanced a legal argument based on an alleged new principle of ideological intervention." *Id.*

47. Copenhagen Document, *supra* note 1, para. 5.

48. *Id.* para. 1.

49. Henkin, *supra* note 32, at 44. In sharp contrast, the Deputy Foreign Minister of the former Soviet Union has stated that "the principle of non-interference, despite its importance, must not operate with regard to human rights and the observance of human rights. I would put it like this, that human rights and democracy must have supremacy over the principle of non-interference." Statement by Y.S. Deryabin, USSR Deputy Foreign Minister, in an interview with V. Levin on All Union Radio, Radio 1 (Sept. 9, 1991), BBC, Summary of World Broadcasts, Sept. 11, 1991, at su/1174/A1/1 (transcript *available in* LEXIS, Nexis Library, BBCSWB File).

They are, in the words of Professor Franck, "weighted with the terminology of *opinio juris*" and "deliberately norm creating."[50]

In sum, if (1) free elections are held, (2) the government so elected is barred from taking office or deposed by use force, (3) another state or states intervene, restore the legitimate government, and (4) withdraw, that is not—and should not be—a violation of international law. The validity of that position does not depend on the Copenhagen Document alone. It can be justified by reference to the language of article 2(4) of the U.N. Charter and the purposes of the Charter, as noted above. However, the emphasis in the Copenhagen Document on the importance of freely elected governments and on the responsibility of states to protect and defend the democratic order against those who would use violence and terrorism to overthrow that order, lends strong support to that position.

50. Franck, *supra* note 32, at 67.